

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRANS-SPEC TRUCK SERVICE, INC.
D/B/A TRUCK SERVICE

Plaintiff,

v.

CATERPILLAR INC.

Defendant.

C.A. NO.: 04-11836RCL

AFFIDAVIT OF DAVID B. ANDERSON IN SUPPORT OF
DEFENDANT CATERPILLAR INC.'S OPPOSITION TO PLAINTIFF'S
AMENDED MOTION FOR A PRELIMINARY INJUNCTION

I, David B. Anderson, of full age, being duly sworn on his oath, deposes and says:

1. My name is David B. Anderson and I am currently employed by Caterpillar Inc. ("Caterpillar") as its Manager of Technical Support. Among other matters, my job duties require me to assist Caterpillar's attorneys in gathering technical information on the company's products, including invoices, purchase orders, warranties, warranty repair histories, technical drawings and bulletins, Operations Manuals and Service Manuals. I have served as Caterpillar's Manager of Technical Services since approximately 2000. Prior to taking this position, I was employed by Caterpillar in various engineering positions. In total, I have been employed by Caterpillar for 31 years.

2. I am familiar with Caterpillar's C-12 series of diesel engines. Over the last nine years, Caterpillar has sold 144,660 C-12 engines. The C-12 has a proven track record of performance in the field.

3. Caterpillar does not sell C-12 engines directly to end-users such as Trans-Spec Truck Service, Inc. ("Trans-Spec"). It sells C-12 engines to original equipment manufacturers (OEM's) and/or independent, authorized Caterpillar dealers only.

4. A search of Caterpillar's regular business records for documents and information related to the sale of Caterpillar C-12 engines to OEM's that, in turn, sold on-highway trucks to the plaintiff in this matter, Trans-Spec, was conducted at my request and direction. Caterpillar's records show that it built and shipped twenty-two C-12, 410 horsepower engines to an on-highway truck manufacturer called Sterling Truck to its manufacturing facility in St. Thomas, Ontario, Canada in November 1999. The serial numbers for each C-12 engine and its build (B), ship (S), and delivery (D) date is set forth below:

| | |
|-----------------------------|--|
| SERIAL NO.: 2KS27780 | B: 11/02/99 S: 11/10/99 D: 01/15/00 |
| SERIAL NO.: 2KS27791 | B: 11/02/99 S: 11/17/99 D: 01/15/00 |
| SERIAL NO.: 2KS27853 | B: 11/02/99 S: 11/12/99 D: 12/08/99 |
| SERIAL NO.: 2KS27844 | B: 11/02/99 S: 11/17/99 D: 01/15/00 |
| SERIAL NO.: 2KS27857 | B: 11/02/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27861 | B: 11/02/99 S: 11/16/99 D: 01/15/00 |

| | |
|-----------------------------|--|
| SERIAL NO.: 2KS27877 | B: 11/03/99 S: 11/16/99 D: 12/08/99 |
| SERIAL NO.: 2KS27878 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27893 | B: 11/03/99 S: 11/15/99 D: 12/08/99 |
| SERIAL NO.: 2KS27897 | B: 11/03/99 S: 11/15/99 D: 12/08/99 |
| SERIAL NO.: 2KS27904 | B: 11/03/99 S: 11/15/99 D: 12/08/99 |
| SERIAL NO.: 2KS27905 | B: 11/06/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27914 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27931 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27936 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27953 | B: 11/03/99 S: 11/17/99 D: 01/15/00 |
| SERIAL NO.: 2KS27955 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |

| | |
|-----------------------------|--|
| SERIAL NO.: 2KS27956 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS27999 | B: 11/03/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS28276 | B: 11/08/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS28368 | B: 11/09/99 S: 11/16/99 D: 01/15/00 |
| SERIAL NO.: 2KS28378 | B: 11/09/99 S: 11/17/99 D: 01/15/00 |

5. Each C-12 engine sold to Sterling Truck was accompanied by a written, limited express warranty. Depending on the date of delivery, one of two warranty statements accompanied the engine when shipped from Caterpillar (SELF5271 for engines delivered in December 1999 and SELF5302 for engines delivered in January 2000). The warranty statement provides for two warranties: a standard warranty covering the first 24 months of use and an extended warranty covering specific components only for the first 60 months of use, or the first 500,000 miles (whichever event took place first). Trans-Spec also purchased Extended Service Coverage Plus (ESC) for its engines (Form No. LELT6573-02). The ESC contract ran concurrent with the extended warranty. Caterpillar's obligation under the warranties and ESC contract is limited to repair and replacement of defective parts (as enumerated therein). Caterpillar prominently and properly excludes all other warranties, express and implied, including warranties of

merchantability and fitness for a particular purpose. Caterpillar also excludes incidental and consequential damages.

6. Caterpillar's express, limited warranties and ESC contract became effective on the delivery date of each C-12 engine. The standard warranty on each such engine ended long ago. The extended warranty on each engine ends either on December 8, 2004 (for the engines delivered on December 8, 1999) or January 14, 2005 (for the engines delivered on January 15, 2000).

7. Caterpillar has honored its warranty obligations to the plaintiff to date. Attached to this affidavit as Exhibit A is a true and accurate summary of all warranty repairs made to the plaintiff's C-12 engines.

8. Plaintiff's complaint claims that Caterpillar participated in discussion of the "exact specifications and intended use for the [Trans-Spec] trucks" through its "representative" Harry Calderbank at a meeting in Ontario, Canada. Caterpillar does not now employ and has never employed a person by the name of Harry Calderbank. Caterpillar employees did not participate in the design, manufacture, assembly, or sale of the truck that the plaintiff purchased from Sterling Truck.

9. The following information about Sterling Truck, published on its website (www.sterlingtruck.com), will provide the Court with an appreciation of the size and sophistication of this truck manufacturer:

"Sterling was founded by Freightliner LLC in 1998 as a new subsidiary with its own distribution network and distinctive product offerings. Sterling is headquartered in Willoughby, Ohio, in the Cleveland metropolitan area. Freightliner LLC is a DaimlerChrysler company, the world's leading commercial vehicle manufacturer.

"Sterling's mission is to be the dominant manufacturer of vocationally oriented, over-the-road and premium owner operator Class 5-8 trucks in

North America. The company offers truck operators a level of product technology and customer support previously unavailable to vocational truck buyers."

"Sterling targets select segments of the vocational markets. Vocational trucks are those that are called on to do more than haul freight -- they are an integral tool for the truck operator. Sterling's vocational trucks are highly engineered, very rugged, have industry-leading driver ergonomics, and are made to be strong, efficient and productive.

Signed under the penalties of perjury this 9th day of September, 2004.


David B. Anderson

Trans-Spec Truck Services Inc. vs. Caterpillar Inc.

MODEL:C-12**SERIAL NO.: 2KS27780****ENG AR: 179-3953****B: 02Nov1999****S: 10Nov1999****D: 15Jan2000**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|------------------|
| 27-Mar-03 | 236042 | AJ55 | \$424.38 | Cold Wheel Burst |
| 1-Apr-04 | 303003 | A73M | \$1,566.61 | Leaks |

SERIAL NO.: 2KS27791**ENG AR: 179-3953****B: 02Nov1999****S: 17Nov1999****D: 15Jan2000**

NO SIMS History

SERIAL NO.: 2KS27853**ENG AR: 169-2487-02****B: 02Nov1999****S: 12Nov1999****D: 08Dec1999**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|-------------|---------------------|
| 4-Feb-00 | 22310 | A55C | \$419.12 | Injector Not Firing |
| 21-Aug-00 | 91501 | D085 | \$92.05 | Fault Code 190-12 |
| 13-Jul-01 | 209077 | D085 | \$1,780.41 | Perf Serv Letter |
| 21-Feb-03 | 14512 | D492 | \$0.00 | Level III Generated |
| 17-Sep-03 | 478325 | D088 | \$14,928.25 | Plug Broken Out |

SERIAL NO.: 2KS27844**ENG AR: 179-3953****B: 02Nov1999****S: 17Nov1999****D: 15Jan2000**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 27-May-04 | 279952 | AJ55 | \$1,700.64 | Front Cover Leak |
| 30-Jun-04 | 289943 | AJ55 | \$0.00 | Flywhl Hsg Bolts Brk |

SERIAL NO.: 2KS27857**ENG AR: 179-3953****B: 02Nov1999****S: 16Nov1999****D: 15Jan2000**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 17-Apr-03 | 192182 | A16J | \$1,067.64 | Excessive Oil Leakag |
| 27-Jun-03 | 178471 | DFHL | \$521.99 | Internal Failure |
| 27-Jun-03 | 178471 | DFHL | (\$521.99) | Internal Failure |
| 30-Jun-04 | 257163 | B420 | \$0.00 | |

SERIAL NO.: 2KS27861**ENG AR: 179-3953****B: 02Nov1999****S: 16Nov1999****D: 15Jan2000**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 8-Nov-00 | 64950 | A73M | \$152.89 | Broken Oil Tube |
| 20-Mar-03 | 217317 | AJ55 | \$424.38 | Shaft Broken |
| 12-Feb-04 | 287711 | A73M | \$5,475.24 | Broken |
| 26-May-04 | 296175 | AJ55 | \$1,694.13 | Gear Case Gask Leaks |

SERIAL NO.: 2KS27877**ENG AR: 179-3953****B: 03Nov1999****S: 16Nov1999****D: 08Dec1999**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|-----------------|
| 8-May-02 | 151660 | AJ55 | \$671.73 | Lack Of Power |
| 20-May-03 | 267396 | B420 | \$174.22 | Spring Broken |
| 27-May-03 | 267396 | B420 | \$1,721.44 | Leak |
| 17-Jul-03 | 275591 | A16J | \$3,484.03 | Cracked Housing |

SERIAL NO.: 2KS27878**ENG AR: 179-3953****B: 03Nov1999****S: 16Nov1999****D: 15Jan2000**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------|
| 4-Apr-00 | 11113 | A73M | \$108.38 | Sensor Inop |
| 27-Apr-00 | 12597 | A73M | \$429.08 | Sensor Inop |
| 27-Feb-03 | 175560 | B420 | \$5,400.35 | Dropped Valves |

SERIAL NO.: 2KS27893**ENG AR: 179-3953****B: 03Nov1999****S: 15Nov1999****D: 08Dec1999**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 23-Mar-00 | 16749 | A73M | \$512.33 | #5 Inject Inop |
| 23-Mar-00 | 16749 | A73M | (\$512.33) | Cat Adjstmnts-Tech-H |
| 30-Mar-00 | 16755 | A73M | \$512.33 | Injector Inop |
| 12-May-00 | 22365 | A73M | \$3,356.29 | Head Oblonged |
| 7-Nov-01 | 122961 | A73M | \$3,861.20 | Broken Housing |

SERIAL NO.: 2KS27897**ENG AR: 179-3953****B: 03Nov1999****S: 15Nov1999****D: 08Dec1999**

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|-----------------|
| 14-Mar-03 | 213968 | B420 | \$419.90 | Scored |
| 17-Mar-03 | 213968 | B420 | \$5,069.64 | Dropped Valve |
| 22-May-04 | 297804 | AJ55 | \$1,902.37 | Frnt Cover Leak |

SERIAL NO.: 2KS27904

ENG AR: 179-3953

B: 03Nov1999

S: 15Nov1999

D: 08Dec1999

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|--------------|
| 25-Aug-03 | 214100 | A73M | \$4,661.74 | Valve Broken |

SERIAL NO.: 2KS27905

ENG AR: 179-3953

B: 06Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|-------------|----------|
| 15-Sep-03 | 288319 | A73M | \$14,376.71 | Broken |

SERIAL NO.: 2KS27914

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|-------------|
| 4-Jan-00 | 12 | A73M | \$676.71 | Bolt Broken |
| 3-Nov-03 | 295592 | A73M | \$4,544.37 | Broken |
| 14-May-04 | 333879 | A73M | \$1,554.73 | Leaks |

SERIAL NO.: 2KS27931

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|--------|-----------------|
| 20-Feb-04 | 262645 | B420 | \$0.00 | Valvestem Broke |

SERIAL NO.: 2KS27936

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|----------|--------|---------|------------|--------------------|
| 7-Dec-01 | 119398 | A73M | \$3,790.57 | Cracked Flywhl Hsg |
| 9-Sep-02 | 161292 | B420 | \$3,663.31 | Broken Bolts |
| 6-Feb-03 | 172420 | A73M | \$0.00 | Cracked |
| 6-Feb-03 | 172420 | A73M | \$0.00 | Cracked |
| 6-Feb-03 | 172420 | A73M | \$0.00 | Cracked |
| 6-Feb-03 | 172420 | A73M | \$4,134.69 | Housing Cracked |

SERIAL NO.: 2KS27953

ENG AR: 179-3953

B: 03Nov1999

S: 17Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|-------------|----------|
| 30-Jan-04 | 233741 | A73M | \$18,447.24 | Broken |

SERIAL NO.: 2KS27955

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|--------|----------------------|
| 29-Jul-04 | 249625 | AJ55 | \$0.00 | Flywheel Bolt Broken |

SERIAL NO.: 2KS27956

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|---------------------|
| 7-May-03 | 228678 | B420 | \$233.88 | T |
| 8-May-03 | 228678 | B420 | \$4,843.53 | Broken Valves |
| 12-May-04 | 293880 | AJ55 | \$1,700.25 | Front Cover Leak |
| 29-Jul-04 | 251181 | AJ55 | \$0.00 | Flywheel Bolt Broke |
| 29-Jul-04 | 251181 | AJ55 | | Dropped #2 Valve |

SERIAL NO.: 2KS27999

ENG AR: 179-3953

B: 03Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|-------|---------|------------|----------------------|
| 22-Feb-00 | 8845 | A73M | \$490.43 | Injector Failure |
| 22-Feb-00 | 8845 | A73M | (\$490.43) | Cat Adjstmnts-Tech-H |

SERIAL NO.: 2KS28276

ENG AR: 179-3953

B: 08Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 12-May-00 | 14305 | A73M | \$108.38 | Sensor Inop |
| 26-May-04 | 248661 | AJ55 | \$1,694.13 | Gear Case Gask Leaks |

SERIAL NO.: 2KS28368

ENG AR: 179-3953

B: 09Nov1999

S: 16Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|----------------------|
| 29-Jul-04 | 289473 | AJ55 | \$0.00 | Flywheel Bolt Broken |
| 29-Jul-04 | 289473 | AJ55 | \$1,680.80 | Gear Case Gask Lks |

SERIAL NO.: 2KS28378

ENG AR: 179-3953

B: 09Nov1999

S: 17Nov1999

D: 15Jan2000

| DATE | MILES | RPR DLR | \$'S | COMMENTS |
|-----------|--------|---------|------------|-------------------|
| 8-May-02 | 166480 | AJ55 | \$671.73 | Lack Of Power |
| 13-Aug-03 | 265343 | A73M | \$2,437.64 | Valve Dropped |
| 13-Aug-03 | 265343 | A73M | \$1,586.77 | Valve Dropped |
| 29-Jul-04 | 317291 | AJ55 | \$1,680.80 | Gear Case Gsk Lks |
| 29-Jul-04 | 317291 | AJ55 | \$0.00 | Cam Ret Bolt Bent |